

REMARKS

Drawings

Applicant added "PRIOR ART" labeling to Figs. 1-3, added bracketing to Figs. 4, 5A, and 8A, and split Fig. 8B into Figs. 8B and 8C. Applicant believes that the drawings are now in full compliance, even without the addition of optional page numbers. (See 37 C.F.R. § 1.84(t), which states only that drawings "should" be numbered, but makes clear that such numbering may not be present.)

Specification

All disclosure objections noted by the examiner are corrected in the above amendments. Note, too, that the specification amendments include changes reflecting the creation of a new Fig. 8 drawing number (i.e., Fig. 8C).

Claim Rejections – 35 U.S.C. § 112

The examiner rejects claims 1-23 and 34-55 as being indefinite. In the examiner's detailed comments directed to claims 1, 34, and 45, it seems that the examiner's chief concern is an alleged ambiguity as to whether Applicant claims a tower reinforcing system (or assembly) alone, or in combination with an existing tower to be reinforced.

These claims are not directed to the combination of the claimed reinforcing system and an existing tower, but rather to the reinforcing system itself. The existing tower as identified in the claims is not a limiting element of the claim, but rather identified and partially described because doing so helps to clarify the claim elements, which are directed to a tower reinforcing system or assembly. It is common practice to describe the environment relevant to a claimed item in order to give that claimed item a more readily understood meaning.

With the above in mind, Applicant amended claims 1, 19, 34, and 46 in an attempt to better clarify that claim 1 is directed to a tower reinforcing assembly, and not to the combination of a tower reinforcing assembly and an existing tower, and to clarify that claim 34 similarly is directed to a tower reinforcing system. Applicant did not modify claim 45, believing that claim 45 is unambiguous beyond argument.

The examiner notes that in formulating his rejections, he considered the above claims to be drawn to the combination of the reinforcing system or assembly. Applicant believes that the claims as originally submitted make clear that the Applicant seeks protection for the tower reinforcing assembly/system of claims 1, 34, and 45. As such, Applicant believes that the indefinite rejections should be withdrawn.

Claim Rejections – 35 U.S.C. § 102

The examiner rejects claims 1-4, 7, 8, 16-23, 34-44, 45-47, and 50-55 under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 6,108,996 to McGinnis. A finding of anticipation under 35 U.S.C. § 102 is proper only if the cited reference discloses each and every limitation of the claimed invention, is enabling, and describes the claimed invention sufficiently to have placed it into the possession of one of ordinary skill in the art. In re Paulson, 30 F.3d 1475, 31 USPQ2d 1671 (Fed. Cir. 1994). More succinctly, the law of anticipation requires that the allegedly anticipating reference discloses each and every limitation of the claimed invention. Moba, B.V. v. Daimond Automation, Inc., 235 F.3d 1305, 66 USPQ2d 1429 (Fed. Cir. 2003). See, also, In re Bond, 910 F.2d 931, 15 USPQ2d 1566 (Fed. Cir. 1990) (stating that a prior art reference anticipates the claim in question only if every element of the claimed invention is identically shown in the reference in the same arrangement as claimed).

Thus, McGinnis is an anticipating reference only if it discloses each and every limitation of Applicant's invention as claimed. Applicant respectfully submits that McGinnis does not disclose a number of features detailed and claimed in the instant application, and thus does not stand properly as an anticipating reference.

For example, one of the fundamental differences between the instant invention and McGinnis is that McGinnis essentially teaches building a separate reinforcing tower, with its own foundation, around a pre-existing tower, and fastening the reinforcing tower to the pre-existing tower at multiple points using "a plurality of longitudinally spaced apart brackets extending between and joining each of the first legs [of the pre-existing tower] to one of the second legs [of the reinforcing tower] with the second legs being parallel to and spaced apart from the first legs for reinforcing the first tower with the second tower." (Excerpted from claim 1 of McGinnis.)

In other words, McGinnis explicitly teaches a type of reinforcing tower wherein the reinforcing tower legs are built up parallel to, but separate and spaced-apart from, the legs of the pre-existing tower. The two towers are interconnected using longitudinally spaced apart brackets that connect the reinforcing tower legs to the pre-existing tower legs. (The specification and drawings of McGinnis include many details supporting this characterization of McGinnis, but see, for example, McGinnis at col. 2, lines 21-47, and at Figs. 2 and 3, which illustrate "augmentation legs" 33 being connected to legs 13 of a pre-existing tower 11 using "braces" 43. Note that McGinnis states that augmentation legs 33 include "flanges" 33a and 33b that extend symmetrically away from a base 33a. However, here, McGinnis simply is describing the angle-iron channel formed along the length of the augmentation (reinforcing) legs 33,

and the use of the word “flange” here should not be misconstrued to mean the same thing as the word “flange” in the instant application and claims.

Indeed, Applicant has amended all independent claims standing for examination to better clarify that the instant invention as claimed includes reinforcing legs having “bearing plates” configured to mount to “leg flanges” of the existing tower legs. In this context, the leg flanges extending horizontally out from the longitudinal axis of the tower legs, and provide flat or semi-flat surfaces onto which the bearing plates of the reinforcing legs may be overlaid and mounted. Indeed, Fig. 8C in the newly labeled drawings of the instant application provides an excellent perspective of the interconnection of reinforcing leg bearing plates and existing tower leg flanges at section joints of the existing tower legs.

By overlaying the existing tower leg flanges, and bolting through such flanges—all such details are well described in the originally-filed application and included in the originally submitted claims, and no new matter is added—the tower reinforcing system of the instant invention provides reinforcing legs that share compressive loads with the existing tower legs. In particular, Applicant’s reinforcing system carries and shares compressive loads across and through the section joints of the existing tower legs. Fastening separately standing (and separately stacked) augmentation tower legs to existing tower legs using longitudinally spaced apart brackets, as is explicitly taught by McGinnis, cannot be argued as teaching Applicant’s claimed method and apparatus for sharing compressive tower loads between existing tower legs and reinforcing tower legs.

Specifically, Applicant amended independent claims 1, 34, and 45 to include bearing plate details along the lines described above. It is believed that these amended

claims and all of their rejected dependents stand in condition for immediate allowance over McGinnis. For example, the examiner noted that claim 9 would be allowable if rewritten to overcome the indefinite rejections made against claim 1, and the amendments made to independent claims 1, 34, and 45 include the bearing plate limitations of claim 9, which were specifically detailed in claim 10 (now canceled). (Note that Applicant did not include all limitations of claim 9 in the amended independent claims because, in fairness to Applicant, those additional limitations are not necessary to practicing the "bearing plate" aspect of the instant invention, at least with respect to any one section of the existing tower.)

Please note, too, that Applicant canceled claim 10 as part of these amendments, because of the bearing plate limitations added to claim 1, and amended claims 2, 9, 11, and 12 to account for the limitations added to claim 1 and/or to correct for dependency renumbering necessitated by the cancellation of claim 10.

Because Applicant believes that the clarifications made to independent claims 1, 34, and 45 places those claims in condition for allowance over McGinnis, it follows that all dependent claims also stand in condition for allowance over McGinnis.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.



---

Michael D. Murphy  
Attorney for Applicants  
Registration No.: 44,958

Dated: June 9, 2005

P.O. Box 5  
Raleigh, NC 27602  
Telephone: (919) 854-1844